

Securities Law Alert: Securities and Exchange Commission to Consider Reinstating the "Uptick Rule"

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On Tuesday, March 10, 2009, Rep. Barney Frank, D-Mass., Chairman of the U.S. House of Representatives Financial Services Committee, announced plans to reinstate the "Uptick Rule." The Rule, which appeared as Rule 10a-1 under the Securities Exchange Act of 1934, as amended, mandated that every short sale transaction be entered into at a price that is higher than the price of the previous trade in the stock.¹ Established in the wake of the Great Depression, the initial purpose of the Rule was to prevent short sellers from conducting bear raids on companies whose stock prices were falling dramatically, resulting in short sellers being the primary cause of a stock price's rapid decline.

The SEC abolished the Rule on July 3, 2007 after conducting studies on the effectiveness of the Rule.² Nevertheless, proponents of the reinstatement contend that the abolition of the Rule may have contributed to recent market declines by creating an environment in which short sales triggered fast and dramatic price drops that created panic among investors and accelerated the failure of a number of companies. Proponents expect a reinstatement of the Rule to boost investor confidence.

On January 8, 2009, Rep. Gary Ackerman, D-N.Y., proposed legislation in the U.S. House of Representatives that would order the SEC to reinstate the Rule within 90 days of the bill's passage.³ The SEC announced this past Friday, March 13, that it will meet on April 8 to consider whether to propose short sale price test rules, which may include the reinstatement of the Rule. If formally proposed by the SEC, the Rule would not become effective until after the expiration of a public comment period.

Endnotes

¹ In a short sale, an investor borrows shares of a stock from a broker, sells the shares, and then hopes to buy the shares back at a lower price before returning them to the broker.

² See Release No. 34-55970, June 28, 2007, available at <http://www.sec.gov/rules/final/2007/34-55970.pdf>.

³ H.R. 302, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h302ih.txt.pdf.

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